

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
Plaintiffs :
v. :
GOVERNOR MARK SCHWEIKER, et al., :
Defendants : NO. 02-CV-2949

**DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, four inmates at the State Correctional Institution at Graterford, claim that the prison's policies and procedures for handling mail sent to them by attorneys, courts, and other public officials and agencies violate their constitutional rights. The Court has before it cross motions for summary judgment. Because the Department of Corrections policy on inmate mail has recently been amended, and some of the amendments relate to the issues in this case, Defendants submit to the Court the amended policy, DC-ADM 803, and this memorandum.

Defendants contend that the Department of Corrections and Graterford policy and procedures before the amendments did not violate Plaintiffs' constitutional rights. Defendants contend that the procedures did not adversely impact any of the Plaintiffs' constitutionally protected interests. They did not restrain speech of the Plaintiffs or their correspondents. They did not invade Plaintiffs' privacy. They did not impede Plaintiffs' access to the courts. Particularly, Plaintiffs have not identified any non-frivolous legal claims that

the procedures either injured or were likely to injure. *See Lewis v. Casey*, 518 U.S. 343 (1996); *Oliver v. Fauver*, 118 F.3d 175 (3d Cir. 1997). But even if the procedures impacted Plaintiffs' constitutionally protected interests, they did not violate the Constitution because they were rationally related to the correctional system's interests in safety, security, and administrative efficiency. *Thornburgh v. Abbott*, 490 U.S. 401, 414-419 (1989); *Overton v. Bazzetta*, 123 S.Ct. 2162 (2003).

The newly amended DC-ADM 803 is identified in, and attached to, the Declaration of Kathleen Zierzyna, filed as an attachment to this Memorandum. The amendments provide some additional protections to confidentiality and delivery of mail, particularly mail from the courts. They add a sentence stating explicitly that mail room staff will not read incoming mail that they open and inspect for contraband. Sec. VI.D.1.a. They add authorization for issuance of control numbers to courts that if used would cause that mail to be opened for the first time in the presence of the inmates. Sec. VI.B.2.b. They provide that mail from the courts that does not bear a control number will be handed directly to the receiving inmate (although it will still be opened and inspected in the mail room). Sec. VI.B.3. While Defendants contend that these amendments were not necessary to make the policy constitutional, they do add protection for any mail that the courts feel needs complete assurance of confidentiality, and they add further assurance that inmates will receive all of their mail from the courts.

GERALD J. PAPPERT
Attorney General of Pennsylvania

By: s/ John O. J. Shellenberger

John O. J. Shellenberger
Chief Deputy Attorney General
Attorney I.D. No. 09714
Attorney for Defendants

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Phone: (215) 560-2940
Fax: (215) 560-1031

CERTIFICATE OF SERVICE

I, John O. J. Shellenberger, hereby certify that the Defendants' Supplemental Memorandum in Support of Their Motion for Summary Judgment, with the Declaration of Kathleen Zwierzyna, has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing System. I further certify that a true and correct copy of the Defendants' Supplemental Memorandum in Support of Their Motion for Summary Judgment, with the Declaration of Kathleen Zwierzyna, was e-mailed on July 23, 2004 to:

Teri B. Himebaugh, Esquire
220 Stallion Lane
Schwenksville PA 19473
thimebaughesq@earthlink.net

s/ John O. J. Shellenberger

John O. J. Shellenberger
Chief Deputy Attorney General
Attorney I.D. No. 09714

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Phone: (215) 560-2940
Fax: (215) 560-1031